

REMARKS

Claims 5-23 are pending in the application. Claims 7-10 and 12-14 are withdrawn. Claims 5, 19, 20, 21, and 22 are amended herein. No new material is added by the amendments herein.

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Claim Objections

Claims 5, 20, and 21 are objected to because of informalities. Applicants herein present amendments that correct the informalities. Applicants respectfully request removal of the objections to claims 5, 20, and 21 in view of the amendments herein.

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Rejections Under 35 USC §102

Claims 5, 6, 11, and 15-23 are rejected under 35 U.S.C. §102(e) as being anticipated by Selmon et al., United States Patent number 6,221,049 (“’049 patent”). The Examiner asserts that the ‘049 patent discloses a device and method for forming a pathway from a sub-intimal space of a blood vessel into a true lumen of the blood vessel.

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Claims 5, 6, 11, and 15-23 are rejected under 35 U.S.C. §102(e) as being anticipated by Selmon et al., United States Patent number 6,514,217 (“’217 patent”). The Examiner asserts that the ‘217 patent discloses a device and method for forming a pathway from a sub-intimal space of a blood vessel into a true lumen of the blood vessel.

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Regarding claim 5, Applicants respectfully submit that neither the ‘049 patent nor the ‘217 patent disclose a method for forming a pathway from a sub-intimal space of a blood vessel into a true lumen of the blood vessel, comprising a catheter system including an internal incising element that is translatable across a portion of the port (emphasis added). For this reason, Applicants respectfully submit that claim 5 is not anticipated by the ‘049 patent or the ‘217 patent. As claims 6, 11, and 15-18 depend from claim 5 and include further limitations thereon, and claim 5 is not anticipated by the ‘049 patent or the ‘217 patent, Applicants submit that claims 6, 11, and 15-18 are not anticipated by the ‘049 patent or the ‘217 patent.

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Regarding claim 19, Applicants respectfully submit that neither the '049 patent nor the '217 patent disclose a method for forming a pathway from a sub-intimal space of a blood vessel into a true lumen of the blood vessel, comprising a catheter system including an internal incising element that is translatable across a portion of the port (emphasis added). For this reason, Applicants respectfully submit that claim 19 is not anticipated by the '049 patent or the '217 patent.

Regarding claim 20, Applicants respectfully submit that neither the '049 patent nor the '217 patent disclose a method for forming a pathway from a sub-intimal space of a blood vessel into a true lumen of the blood vessel, comprising a catheter system including an internal excising element that is translatable across a portion of the port (emphasis added). For this reason, Applicants respectfully submit that claim 20 is not anticipated by the '049 patent or the '217 patent.

Regarding claim 21, Applicants respectfully submit that neither the '049 patent nor the '217 patent disclose a method for forming a pathway from a sub-intimal space of a blood vessel into a true lumen of the blood vessel, comprising a catheter system including an internal excising element that is translatable across a portion of the port (emphasis added). For this reason, Applicants respectfully submit that claim 21 is not anticipated by the '049 patent or the '217 patent.

Regarding claim 22, Applicants respectfully submit that neither the '049 patent nor the '217 patent disclose a method for establishing a pathway through a chronic total occlusion of a blood vessel, the method comprising a catheter system including an internal incising element that is translatable across a portion of the port (emphasis added). For this reason, Applicants respectfully submit that claim 22 is not anticipated by the '049 patent or the '217 patent.

Regarding claim 23, Applicants respectfully submit that neither the '049 patent nor the '217 patent disclose a method for establishing a pathway through a chronic total occlusion of a blood vessel, the method comprising applying a vacuum through a catheter lumen and a port, evacuating fluid from the sub-intimal space and bringing the sub-intimal tissue into intimate contact with the port (emphasis added). For this reason,

Applicants respectfully submit that claim 23 is not anticipated by the '049 patent or the '217 patent.

Petition for Extension of Time

5 A Petition for Extension of Time Under 37 CFR §1.136(a) is enclosed herewith for a three month extension of time.

Conclusion

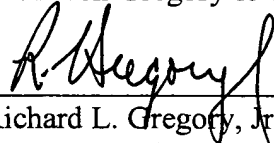
10 If in the opinion of Examiner Ho a telephone conference would expedite the prosecution of the subject application, or if there are any issues that remain to be resolved prior to allowance of the claims, Examiner Ho is encouraged to call Rick Gregory at (408) 236-6646.

AUTHORIZATION TO CHARGE DEPOSIT ACCOUNT

15 Please charge deposit account 501914 for any fees due in connection with this Office Action response.

20 Date: June 22, 2005

Respectfully submitted,
Shemwell Gregory & Courtney LLP


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